

**DRAFT****Section 10**

*Comments about this document. Paragraph numbers have been omitted, but will be included in the final issuance. For ease in referencing specific locations when providing comments, line numbers have been included. Those line numbers are consecutive from the beginning to the end of this section; so a reference to Section 10, line 53 will indicate the precise location in Section 10 that any comments may refer to. The number in brackets ([]) refers to either the corresponding paragraph in the Domestic Tender of Service or the International Tender of Service; generally, though, the number refers to the ITOS paragraph.*

**Participant Liability. [old 10.1]****Levels Of Service And Released Value. [old 10.1.1]****Levels Of Service. [old 10.1.1.1]**

Participants providing domestic and/or international transportation services pursuant to the provisions of this HTOS shall offer full value service for each shipment, defined as transportation services (including accessorial and terminal services) furnished by a participant for which the participant assumes liability for loss and/or damage not to exceed the full replacement value of the items transported.

**Released Value. [old 10.1.1.2]****Full Value Service. [old 10.1.1.2.2]****Domestic Shipments.**

The released value of shipments handled under Full Value Service, unless increased by the Government on behalf of the owner of the property for a specific shipment and annotated on the GBL, will be a value not exceeding \$3.50 times the actual weight of each domestic shipment in pounds.

**International Shipments.**

The released value of shipments handled under Full Value Service, unless increased by the Government on behalf of the owner of the property for a specific shipment and annotated on the GBL, will be a value not exceeding \$5.00 times the actual weight of each international and/or offshore shipment.

**Increase In Basic Released Value. [old 10.1.2]**

Should the owner elect to specify a released value different from that specified on the GBL after the GBL has been issued, but prior to the date of pickup, the participant should have the owner contact the RTO and request an amendment to the original GBL indicating the desired valuation.

**Extent of liability. [old 10.1.3]****Exception to Liability. [old 10.1.5.3 and 10.3.3]**

Provided that the burden of proof shall be on the participant to show that the loss or damage was so caused by the one or more of the following excepted conditions which relieve it of liability, the participant is not responsible for loss or damage caused by (a) acts of God, public authority or negligence of the owner, and/or owner's agent; (b) hostile or warlike action in the time of peace or war, including action in hindering, combating or defending against an actual, impending or expected attack, including (1) by any government or sovereign power (de jure or defacto), or by an authority maintaining forces, and (2) by an agent of any such government, power, authority or forces; (c) any weapon of war employing atomic fission or radioactive force whether in time of peace or war, including contamination attributable to effects of radioactive or fissionable materials; (d) insurrection, rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering, combating, or defending against such occurrence, seizure or destruction under quarantine or customs regulations, confiscation by order of any government or public authority, or risks of contraband or illegal transportation or trade; (e) strikes, lockouts, labor disturbances, riots, civil commotion, acts of person or persons taking part in such occurrence or disorder; (f) Inherent vice of the article or infestations by mollusks, arachnids, crustaceans, parasites or other types of pests, fumigation or decontamination when not the fault of the carrier. The burden of proof shall be on the carrier to show that the immediate cause of the loss or damage was one or more of the exceptions listed above which relieved it of liability.

**DRAFT****Liability for General Average/Salvages - International Only. [old 10.3.1.4]**

On ocean shipments, in addition to the carrier's liability as otherwise provided in this HTOS, the carrier assumes full liability for and will pay all contributions in general average or salvage assessed against personal property and will provide bonds or make arrangements for the prompt release of the shipments from any maritime lien arising therefrom.

**Liability for Non-Vehicular Personal Property. [old 10.1.3.1]****General.**

Except when loss and/or damage arises out of causes beyond the control and without the fault or negligence of the participant, the participant shall be liable to the United States Government or the owner for the loss of and/or damage to any article in an amount not to exceed the released value of the article. The participant shall be so liable for any article over which the participant has control or custody. Custody on the part of the participant shall be considered to begin at the time performance of service commences and shall continue until services are completed; including, but not limited to, while being packed, picked up, loaded, transported, delivered, unloaded, or unpacked; stored in transit; or serviced (appliances, etc.) by a third person hired by the participant to perform the servicing.

**For International Shipments.****Non-Vehicular Property Delivered To A Foreign Post. [old 10.3.1.5.1.1]**

Subject to the general provisions stated above and in the event non-vehicular personal property is lost or damaged, the measure of damages for a shipment to be delivered to a foreign post shall be repair or replacement not to exceed the replacement value of the item at the foreign post; provided, however, the foreign post value is within ten percent (+/-10%) of the CONUS replacement value at the point of origin at the time of arrival at the port of debarkation. In the event the foreign post value is not within ten percent (+/-10%), the measure of damages will be the CONUS replacement value of the item at the point of origin at the time of arrival at the port of debarkation plus the cost of transportation and delivery of the property, including customs clearance, to the employee at the post. Replacement value must be based on replacement of the property with property of comparable kind and quality.

**Non-Vehicular Property Delivered Within the Continental United States. [old 10.3.1.5.1.2]**

Subject to the general provisions stated above and in the event personal non-vehicular property is lost or damaged, the measure of damages for a shipment to be delivered within the Continental United States shall be repair or replacement not to exceed the replacement value of the property at the point of destination in the United States, including the cost of transportation and delivery of the property, including customs clearance, to the employee at the destination residence. Replacement value must be based on replacement of the property with property of comparable kind and quality.

**Liability for Vehicular Property.****International Shipment. [old 10.3.1.5.2.1]**

In the event of loss/damage to vehicular property during the course of an international shipment, the measure of damages will be repair or replacement not to exceed the current value of the vehicle based on the National Automobile Dealers Association (NADA) value for the vehicle in the month of landing converted to local currency plus the cost of rental of a comparable vehicle for the period of time during which the vehicle is unavailable for employee use due to inoperability or repair; provided, however, that the liability of the cost of rental shall not exceed the current value of the vehicle. The quality of repair or replacement must equal or exceed the standards applied in the Continental United States.

**Domestic Shipment. [old 10.3.1.5.2.2]**

In the event of loss/damage to vehicular property during the course of a domestic shipment, the measure of damages will be repair or replacement not to exceed the current value of the vehicle based on the National Automobile Dealers Association (NADA) value for the vehicle plus the cost of rental of a comparable vehicle for the period of time during which the vehicle is unavailable for employee use due to inoperability or repair; provided, however, that the liability of the cost of rental shall not exceed the current value of the vehicle. The quality of repair or replacement must equal or exceed the standards applied in the Continental United States.

**Liability for Real Property Damage. [old 10.1.4]**

The participant will be liable for any damage sustained to the premises and/or property of the employee/owner caused by the participants' agents/employees.

**Liability for High Risk Items. [old 10.1.6.1]**

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Participant's legal liability for loss or damage to high risk items will be the same as for any other property lost or damaged. Unless covered by a high risk program established in accordance with HTOS Paragraph 10.1.6.3. below, a participant's liability for high risk items shall in no way be limited to a value less than that established under the terms of the level of service stated on the Government bill of Lading.

**Liability for Concealed Loss/Damage. [old 10.1.7]****General. [old 10.1.7.1]**

The participant shall be liable for concealed loss and/or damage discovered by the owner within 75 days after delivery if the owner notifies the participant, in writing, of the loss and/or damage within 75 days from the date of delivery. The notification requirement cited in HTOS Paragraph 5.12 does not mean that a claim cannot be filed after seventy-five (75) days by the property owner and may not be used as the sole basis for denying a claim.

**Burden Of Proof When Notice Given. [old 10.1.7.3]**

If a claim for concealed damage is filed within the period specified in HTOS Paragraph 5.12, the burden of proving that it did not cause the loss/damage is on the participant. If a claim for concealed loss/damage is filed after the period specified in HTOS Paragraph 5.12 and the participant received notice of all or some of the loss/damage within the period specified in HTOS Paragraph 5.12, the burden of proof is on the participant for that loss/damage for which it received notice and on the property owner for that loss/damage for which he/she did not give notice.

**Burden Of Proof When Notice Is Not Given. [old 10.1.7.4]**

If a claim for concealed loss/damage is filed after the period specified in HTOS Paragraph 5.12 and the participant did not receive notice of any of the loss/damage within the period specified in HTOS Paragraph 5.12, the burden of proving that the participant caused the loss/damage is on the property owner.

**Government Custody. [old 10.1.7.2]**

Except as provided above with respect to concealed loss and damage, the participant shall not be liable for loss or damage when the participant can reasonably establish that such loss or damage occurred while the shipment was in the effective custody and control of the Government.

**Liability for Delay. [old 10.1.8]**

The participant shall be liable for the inconvenience and extra expense caused to the owner and to the Government, if the owner is required to retain temporary quarters due to the participant's failure to pickup or deliver the household goods shipment in accordance with the instructions provided by the RTO, the owner of the property, or his designated representative. Equipment failure, actions by underlying participants and/or agents and illness of or error by persons in its employ or in the employ of its agents, among others, are considered within the control of the participant and may not be used as a basis for denying a claim for damages due to delay.

**Liability for Terminated Shipments. [old 10.1.9]**

In the event the progress of a shipment is terminated by the Government and is assigned to another participant for completion of service, both the terminated and the assigned participants shall be jointly liable for any loss and/or damage to the shipment and for any delay by the responsible participant. The Government reserves the right to file any claim for property loss/damage or for shipment delay with either the terminated participant or the assigned participant, and the participant against which the claim was filed shall be responsible for settling the claim in full without waiting for any acknowledgment of liability or reimbursement from the other participant.

**Liability For Prohibited Items. [old 10.1.6.4]**

When a participant undertakes the shipment of items prohibited by law or regulatory body which are injurious or contaminating to the shipment, the participant shall be liable for loss or damage resulting from its failure to decline such items.

**Liability for Missing Articles. [old 10.1.5]****General. [old 10.1.5.1]**

If the missing articles are not found within thirty (30) calendar days from the date of shipment delivery, they shall be presumed lost by the participant and payment to the property owner will be made without dispute upon the filing of a claim.

**Exception. [old 10.1.5.2]**

In the event article/items are located subsequent to claims action by the employee and/or the Government, the participant shall hold the articles/items at the point of location, notify the RTO, and await disposition instructions. When articles/items

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are returned to the employee, any claims which have been paid in favor of the employee, shall be readjusted in the participant's favor.

**Employee Failure To Verify Inventory. [old 10.1.10]**

The participant may not deny liability for property loss and/or damage on the basis that the Government, the employee, or the employee's authorized representative failed to verify the origin or destination inventories as prepared in accordance with HTOS Paragraph 4.10.

**Participant Failure To Settle. [old 10.1.11]**

Failure to make settlement within the initial thirty (30) day period, or the maximum sixty (60) day period if proper notice is given as provided in HTOS Paragraph 5.14, shall be construed as a refusal by the participant to settle the claim and as an admission of its liability to the full extent of the law and this HTOS.

**Establishment Of High Risk Program. [old 10.1.6.3]**

A high risk program limiting a participant's liability for loss of or damage to high risk items may only be established with the approval of the RTO and be evidenced by a written agreement setting out the terms and conditions established by the shipping Federal agency. The mere issuance of a GBL to a participant with a pre-existing high risk program is not sufficient to incorporate the terms of such high risk program into the contract of carriage.

**Preparation And Filing Of Claim. [old 10.2]****General. [old 10.2.1]**

The participant must furnish to the property owner all reasonable and necessary assistance in the preparation and filing of claims. Included in such assistance are inspections of the damaged property, if requested, completion of claim forms, and obtaining estimated repair costs at no cost to property owner.

**Claims For Loss Of And/Or Damage To Personal Property. [old 10.2.2]**

Claims for loss of and/or damage to personal property shipped pursuant to this HTOS must be filed with the participant by the shipping Federal agency; provided, however, that with the approval of the shipping federal agency, the owner of the property or his designated representative may file the claim on behalf of himself and the Government.

**Claims For Damage To Real Property. [old 10.2.3]**

Claims for damage to real property belonging to the property owner at the time of shipment or subsequent thereto must be filed with the participant by the shipping Federal agency; provided, however, that with the approval of the shipping federal agency, the owner of the property or his designated representative may file the claim on behalf of himself and the Government.

**Claims For Injury. [old 10.2.4]**

Claims for injury shall be filed with the participant by the injured party.

**Claims For Delay. [old 10.2.5]**

Claims for delay may be filed by the property owner, or his designated representative, or by the Federal agency paying the cost of the services provided pursuant to this HTOS.

**Minimum Filing Requirements. [old 10.3]**

A communication in writing from a claimant filed with the Government or the participant and (1) containing facts sufficient to identify the shipment (or shipments) of property involved, (2) asserting liability for alleged loss, damage, injury, or delay, and (3) making claim for the payment of a specified or determinable amount of money, will be considered as sufficient compliance with the provisions for filing claims embraced in the bill of lading or other contract of carriage.

**Documents Not Constituting Claims. [old 10.4]**

Bad order reports, appraisal reports of damage, notations of shortage or damage, or both, on freight bills, delivery receipts, or other documents, or inspection reports issued by the participant or their inspection agencies, whether the extent of the loss or damage is indicated in dollars and cents or otherwise will, standing alone, not be considered as sufficient to comply with the minimum claim filing requirements specified above.

**Supporting Documents. [old 10.5]****General. [old 10.5.1]**

When necessary as part of an investigation, each claim must be supported for each article by a statement of the nature and extent of such damage, the basis for the amount claimed, i.e., date article purchased, original cost, amount of depreciation, actual cash value at time of loss or damage, or the full replacement value, in those cases where shipments are released to full replacement value.

**Inconvenience Claims. [old 10.5.2]**

Inconvenience claims shall be supported with an itemized listing of costs incurred and payments made by the Government to the employee.

**Identical Inventory Exception Coding. [old 10.5.3]**

In the event items are listed on the inventory with identical, or substantially identical, exception coding, the exception coding shall be construed as void and such items shall be construed as inventoried without exception.

**Verification Of Loss. [old 10.6]****Only Claim. [old 10.6.1]**

When an asserted claim for loss of an entire package or an entire shipment cannot be otherwise authenticated upon investigation, the participant will obtain from the claimant of the shipment involved a certified statement, in writing, that the property for which the claim is filed, has not been received from any other source.

**Inventory Correctness. [old 10.6.2]**

When there is an asserted claim for loss of an article not specified in the inventory, the participant must bear the burden of establishing that the inventory was a complete listing of all items in the shipment and that the article was not received by the participant.

**Items In Cartons Inventoried As *Miscellaneous*. [old 10.6.3]**

When there is an asserted claim for loss of an article contained in a carton labeled by the participant as “miscellaneous” or its abbreviation “misc.” or any comparable abbreviation to describe the contents of containers when the total items in a container are too numerous to list on the carton or inventory line item and then only if the room or area from which packed is identified; i.e., “misc.-youth room” the item shall be construed as present in the carton and the participant shall not contest a claim for missing items related to the nature of such cartons.

**Satisfaction Of Claim. [old 10.7]****Property Loss/Damage. [old 10.7.1]**

The participant shall satisfy a claim by repairing or replacing the property lost or damaged to the extent of participant liability with materials of like kind, quality, and condition at time of acceptance by the participant. Repair and/or replacement will also be construed to include payment in cash. In the event that estimates of repair costs are obtained by the employee, either on his/her own or at the request of the participant, the estimator's cost to furnish such estimates shall be reimbursable to the employee; provided, however, that if the terms of the estimate provide that the cost of the estimate will be deducted from the cost of repairs when repairs are completed, the participant's liability will not exceed the cost of repairs.

**Inconvenience Claims. [old 10.7.2]****Filed By Employee. [old 10.7.2.1]**

When the claim is filed by the employee, the participant shall be liable for the reasonable costs incurred by the employee in excess of those reimbursed the employee by the Government.

**Filed By The Government. [old 10.7.2.2]**

When the claim is filed by the Government, the participant shall be liable for the reimbursement made by the Government to the employee for the temporary quarters retained by the employee.

**Government Liability - International Only. [old 10.1.6]**

The United States Government (DOS or other US Government agencies assuming effective custody) will be liable to the participant for damage to or loss or destruction of lift vans due to negligence of the Government, reasonable wear and tear excepted.